

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CUMULOUS COMMUNICATIONS	)	File No. A034945
	)	
Application for Licenses in the Private Land	)	
Mobile Radio Service at Sanger, Fresno,	)	
Santa Nella, Mariposa, Westley and	)	
Cameron Park, in California	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 14, 2000**

**Released: July 20, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we address the objection submitted by the California State Automobile Association, Inc. (CSAA), an affiliate of the American Automobile Association (AAA), to the above-captioned private land mobile radio (PLMR) application filed by Cumulous Communications (Cumulous). Based on the record in this proceeding, we conclude that the application should be granted in part and denied in part.

**II. BACKGROUND**

2. In 1996, the Commission consolidated the twenty existing PLMR services into two frequency pools, Public Safety and Industrial/Business (I/B), and determined that each of the frequency coordinators that were certified to provide coordination services in any of the radio services included in the I/B pool would be eligible to coordinate any frequency in the I/B pool.<sup>1</sup> Frequencies that had been assigned to the Automobile Emergency Radio Service (AERS) and were exclusively coordinated by AAA were included in the I/B Pool.<sup>2</sup> The Commission provided, however, that frequencies formerly allocated exclusively to the Power, Petroleum and Railroad Radio Services would continue to be coordinated only by the relevant coordinator.<sup>3</sup> On reconsideration, the Commission expanded the exception (of exclusive coordination) to

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<sup>1</sup>Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd. 14307, 14317 ¶ 20, 14328 ¶ 40 (1997).

<sup>2</sup>*Id.* at 14317 ¶ 20.

include frequencies formerly allocated to those services on a shared basis, and to frequencies formerly allocated on an exclusive or shared basis to the AERS.<sup>4</sup> The rule change with respect to former AERS frequencies took effect on August 5, 1999.<sup>5</sup>

3. On March 12, 1999, Cumulous filed an application for authorization to operate on various I/B Pool frequencies, including some that were previously allocated to the AERS.<sup>6</sup> On April 21, 1999, CSAA filed an objection to Cumulous's application.<sup>7</sup>

### III. DISCUSSION

4. CSAA requests that the subject application be denied with respect to former AERS frequencies in order to avoid an adverse impact on CSAA's operations.<sup>8</sup> It argues that Cumulous does not adequately justify the number of channels for which Cumulous applied. In addition, CSAA argues that the application should be denied because, as noted above, the Commission subsequently amended its Rules to provide that the former AERS frequencies should be coordinated exclusively by AAA.<sup>9</sup>

5. *Interference.* CSAA states that a primary reason for seeking denial of the subject application is that it would cause interference to CSAA's existing operations. In this connection, we note that the subject application is for frequencies in the 450-470 MHz band, which are available only on a shared basis and not

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<sup>3</sup>*Id.* at 14330 ¶ 42.

<sup>4</sup>Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd. 8642, 8651 ¶ 18 (1999) (*Second MO&O*). We note that this decision has been stayed with respect to frequencies formerly allocated on a shared basis to the Power, Petroleum and Railroad Radio Services, pending resolution of petitions for reconsideration. Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Fourth Memorandum Report and Order*, 15 FCC Rcd. 7051, 7056 ¶ 14 (1999).

<sup>5</sup>*See* 64 Fed. Reg. 36528, 36528 (1999).

<sup>6</sup>FCC File No. A034945 (filed March 12, 1999).

<sup>7</sup>Letter from John Prendergast, counsel for the California State Automobile Association (CSAA), to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (dated and filed April 21, 1999) ("CSAA Objection").

<sup>8</sup>*Id.* at 1, 2.

<sup>9</sup>In addition, CSAA argues that the subject application should be granted on more suitable frequencies to protect CSAA's operations because Congress has recognized automobile clubs as "quasi-public safety entities." *Id.* at 3. We recognize that the legislative history of the Balanced Budget Act of 1997 declares that automobile clubs provide a "valuable public safety service" protecting the safety of life, health and property. *See* H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. at 572 (1997). We disagree, however, with CSAA's suggestion that the Balanced Budget Act requires a reinterpretation of our PLMR frequency coordination procedures. *See* Landlinx Communications, *Order on Reconsideration*, DA 99-3038, at ¶ 5 (WTB PSPWD rel. Jan. 3, 2000), *recon. pending* (filed Jan. 24, 2000) (*Landlinx*).

assigned for the exclusive use of any licensee absent a waiver.<sup>10</sup> We do not believe that any overlap between CSAA's and Cumulous's coverage areas is necessarily improper.<sup>11</sup> We find that the record in this proceeding is devoid of evidence that granting the subject application would be inconsistent with or violative of the Commission's Rules in this regard. Thus, we conclude that if the subject application is granted, CSAA must share these frequencies with Cumulous. In the event of actual harmful interference to CSAA's operations (as opposed to potential interference), we remind both parties of their mutual obligations to attempt to resolve the problem.<sup>12</sup>

6. *Spectrum Efficiency Requirements.* Section 90.35(e) of the Commission's Rules requires a satisfactory showing of need when applicants seek more than one frequency or pair of frequencies in a given area.<sup>13</sup> In addition, for trunked operations, Section 90.187(e) limits the number of channels that can be sought in a single application to ten.<sup>14</sup> CSAA argues that the grant of multiple frequencies to Cumulous would be improper because the applicant did not adequately justify multiple frequencies.<sup>15</sup> We believe, however, that authorizing an applicant to operate on multiple frequencies would actually ameliorate rather than contribute to a potential adverse impact on CSAA's existing operations.<sup>16</sup> Thus, we do not believe that CSAA would be harmed by a grant of this aspect of the license application. In light of the fact that the contested frequencies are shared, we believe that an assignment of multiple frequencies to a single entity in a given geographical area could be beneficial. The effect of multiple frequencies for a single entity is that there are more channels to choose from, which can deter congestion on otherwise singular conflicting channels. If such an entity has more channels to use, then it is able to distribute its communications across more than one channel, thereby reducing the load on channels heavily used by others, including CSAA.

7. With regard to the specific number of channels sought, however, we note that Cumulous proposes to operate in a trunked mode.<sup>17</sup> Therefore, Section 90.187(e) limits the number of frequencies that Cumulous may receive from a single application to ten. Cumulous has not requested or justified a waiver of this limitation. Therefore, its application will be granted only to the extent that it is consistent with Section 90.187(e) of the Commission's Rules.

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<sup>10</sup>See 47 C.F.R. § 90.173.

<sup>11</sup>See *American President Lines, Memorandum Opinion and Order*, DA 00-933, ¶ 9 (WTB PSPWD rel. Apr. 28, 2000) (*American President*); Douglas R. Thompson d/b/a Cara Enterprises, *Memorandum Opinion and Order*, 15 FCC Rcd. 2816, 2818-19 ¶ 9 (WTB PSPWD 2000); *Landlinx*, ¶ 4.

<sup>12</sup>See 47 C.F.R. § 90.173(b).

<sup>13</sup>47 C.F.R. § 90.35(e).

<sup>14</sup>47 C.F.R. § 90.187(e). This rule was enacted to codify the Commission's practice of limiting the number of trunked channels that may be sought in a single application, in order to balance the threat of spectrum "warehousing" with the benefits of flexibility and efficiency in the PLMR shared spectrum. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, 14 FCC Rcd. 10922, 10930-31 ¶ 18 (1999).

<sup>15</sup>CSAA Objection at 2, 3.

<sup>16</sup>See *American President*, ¶ 10.

<sup>17</sup>Cumulous Opposition at Attachment I (dated and filed May 4, 1999).

#### IV. CONCLUSION

8. For the reasons set forth above, we find that Cumulous' application should be granted in part and denied in part. CSAA does not demonstrate any impediment to its shared use of spectrum that would conflict with the Commission's Part 90 Rules. Pursuant to Section 90.187(e), however, the grant will be limited to ten channels.

#### V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, application FCC File No. A034945, filed by Cumulous Communications on March 12, 1999, IS REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for further processing consistent with this *Memorandum Opinion and Order*.

10. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau